



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 27 2015

OFFICE OF
GENERAL COUNSEL

Re: Freedom of Information Act Request EPA-HQ-2013-006023 (HQ-APP-2013-008586); Confidentiality Determination – Final Version with All Errata Corrected (Clean)

Dear Business Submitter:

The U.S. Environmental Protection Agency (“EPA” or “Agency”) has received a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for certain records submitted to EPA under the Renewable Fuel Standard (“RFS”) program between January 1, 2011 and May 2013. The records requested include the Annual Compliance reports submitted by Obligated Parties; Renewable Identification Number (“RIN”) Activity or Ownership by Quarter; and transactional information entered into the EPA’s Moderated Transaction System (“EMTS”). The FOIA request does not identify by name any single company in its request for RFS documents and therefore applies to information submitted by nearly 1,100 entities since 2011. In accordance with applicable EPA regulations, 40 C.F.R. § 2.204(c), EPA’s Office of Transportation and Air Quality (“OTAQ”) determined that some companies had asserted confidential business information (“CBI”) claims in regard to the reports and transactional information submitted under the RFS program and that other companies could be expected to assert CBI claims for some or all of the information sought through the FOIA request. The FOIA request was therefore initially denied under Exemption 4 of the FOIA, 5 U.S.C. §§ 552(b)(4), to afford companies an opportunity to provide comments and information to substantiate confidentiality claims, as described below. *See* 40 C.F.R. § 2.204(d).

In light of the large number of businesses that had made CBI claims or that were expected to make CBI claims, EPA conducted a multi-step process, beginning in December 2014. First, 60 companies were sent formal requests by certified letter for substantiations, as agreed to by the requester and pursuant to 40 C.F.R. § 2.204(e). Second, recognizing that a decision in this case would likely be the same for all companies that submitted the same type of information, EPA published a Federal Register Notice (“FR Notice”) to provide the remaining businesses that supplied potentially responsive information with an opportunity to provide comments in support of each respective business’s confidentiality claims. *See* 79 Fed. Reg. 73,577 (Dec. 11, 2014). The EPA’s Office of General Counsel (“OGC”) reviewed and considered 123 responses received from the businesses that were contacted by direct letter and through the FR Notice. This confidentiality determination covers the information as described herein and listed within the attached appendix.

I have carefully considered the claims of confidentiality, the company substantiations received through the process described above, and OTAQ's program recommendation.¹ For the reasons stated below, I find that part of the information claimed as business confidential is entitled to confidential treatment. I have also determined that part of the information claimed as business confidential is not entitled to confidential treatment.²

GENERAL BACKGROUND

A. Renewable Fuel Standard ("RFS") Program

In 2005, and again in 2007, Congress amended the Clean Air Act ("Act") to establish a Renewable Fuel Standard ("RFS") program, now codified at 42 U.S.C. § 7545(o). See Energy Policy Act of 2005, Pub. L. No. 109-58; Energy Independence and Security Act of 2007, Pub. L. No. 110-140. Congress enacted the RFS program to "move the United States toward greater energy independence and security," and to "increase the production of clean renewable fuels," among other purposes. Pub. L. No. 110-140, 121 Stat. 1492, 1492 (2007). To accomplish these purposes, Congress established specific annual volume objectives for four categories of renewable fuel—total renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel—with the intent of increasing their use as transportation fuel over time. 42 U.S.C. § 7545(o)(2)(B)(i)(I).

Under the RFS program, Congress directed EPA to "ensure" that the Nation's transportation fuel supply contains at least the applicable volumes of total renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel that are specified by Congress in the statute. 42 U.S.C. § 7545(o)(2)(A)(i). EPA does so by establishing annual renewable fuel standards. The standards are a percentage for each type of renewable fuel. To calculate the standards, EPA divides the applicable volume for each type of renewable fuel established in the Act by the Energy Information Administration's ("EIA") estimate of the national volume of transportation fuel that will be sold or introduced into commerce in that year. *Id.* at § 7545(o)(3)(A).

The percentage standards for each of the renewable fuels are interrelated or "nested." Advanced biofuel is a subset of renewable fuel, and cellulosic biofuel and biomass-based diesel are two subsets of advanced biofuel. See 42 U.S.C. § 7545(o)(1)(B), (D), (E), (J). A subset of renewable fuel may be used by obligated parties to satisfy the broader category of renewable fuel of which it is a part. *Id.* 40 C.F.R. § 80.1427(a)(3). For example, any renewable fuel that meets the definition of cellulosic biofuel or biomass-based diesel may be used to satisfy the individual standards for cellulosic fuel or biomass-based diesel, as well as the standard for advanced biofuel

¹ The documents and information claimed as confidential are listed in "Appendix I" at the end of this determination.

² A small number of companies that submitted comments in response to EPA's request for substantiations of confidentiality claims explicitly waived their claims of confidentiality for all or portions of the information at issue. EPA will review the responsive information submitted by these companies to determine if any information that does not harm other companies may be released; however, no information of this type will be released until after the court issues a ruling in the litigation, *Perkins Coie LLP v. McCarthy*, Case 1:13-cv-01799 (D.D.C. filed Nov. 11, 2013).

and total renewable fuel. Similarly, any renewable fuel that meets the definition of advanced biofuel may be used to meet the total renewable fuel standard.

B. EPA's RFS Compliance Program

EPA regulations specify that refiners and importers of gasoline and diesel fuel ("obligated parties") are responsible for compliance with the annual renewable fuel percentage standards promulgated by EPA. Obligated parties determine their individual renewable volume obligations ("RVOs") by multiplying the total of their gasoline and diesel production and import for a calendar year by each of the percentage standards established by EPA for that calendar year for the four types of renewable fuel. However, obligated parties are not required to individually blend the volumes of renewable fuel corresponding to their RVOs. Instead, obligated parties demonstrate compliance by accumulating and then retiring "renewable identification numbers" ("RINs"). RINs are created, traded and used for compliance as follows.

A renewable fuel producer or importer generates RINs when manufacturing or importing the renewable fuel. *See* 40 C.F.R. § 80.1426. At the time of RIN generation, the renewable fuel producer enters ten information items into EMTS (described further below) to create a unique RIN. The RIN is essentially a combination of attributes that reflects information such as company name, facility, year generated, serial number for the batch of fuel, the type of renewable fuel (by "D code") and the number of RINs. *See* 40 C.F.R. § 80.1425. RINs are "assigned" to a batch of renewable fuel and travel with that fuel until it is purchased by an obligated party, a party that blends renewable fuel with conventional transportation fuel, or a renewable fuel exporter. *See* 40 C.F.R. §§ 1426(e), 1428. Those parties "separate" the RINs from the associated physical gallons of renewable fuel. The RINs may thereafter be used for compliance purposes by the party that separated it, saved for future compliance, or traded to others for their compliance purposes. *See* 40 C.F.R. § 80.1429. This system allows obligated parties to comply with their RVOs by accumulating RINs through their own renewable fuel blending activities, or by purchasing RINs that reflect the blending activities of others. The RFS program also includes additional compliance flexibilities. For example, obligated parties may elect to carry an RVO deficit into the next compliance year. In addition, excess RINs from one year can be used to satisfy up to 20-percent of an obligated party's RVO in the following year. And, for cellulosic biofuel, obligated parties can generally elect to satisfy their RVOs through the purchase of cellulosic waiver credits from EPA rather than through the purchase of cellulosic biofuel RINs. *See* 40 C.F.R. § 80.1456.

As a general matter, the physical gallons of renewable fuel produced under the RFS program are not tracked to their ultimate use, since for most such fuels the only practical beneficial use for them is as transportation fuel, heating oil or jet fuel, which are all permissible uses under the CAA. RINs generated at the time of renewable fuel production or import are assumed, therefore, to reflect the volume of renewable fuel that is used as intended by the CAA. However, any volume of renewable fuel that is exported would be unavailable for RFS compliance and the RINs generated at the time of their production would not accurately reflect volumes used within the United States. Therefore, exporters of renewable fuel are required to accumulate and retire RINs representing the volume of renewable fuel they export. This has the

effect of ensuring that RINs in the marketplace reflect volumes of renewable fuel used domestically. Unlike the case for obligated parties, exporter RVOs are determined solely by the volume and type of renewable fuel they export; their RVOs are not based on the annual RFS percentage standards.

C. RFS Compliance Tracking

EPA tracks all transactions involving RINs using EMTS. 40 C.F.R. § 80.1452 (providing EMTS requirements); *see also* EPA PowerPoint on EMTS available at <http://www.epa.gov/otaq/fuels/renewablefuels/emtsdocs/epa-mod-trans-system-pres.pdf>. RIN transactions include initial RIN generation, RIN buying and selling, RIN separation from associated renewable fuel, and RIN retirement for compliance. Obligated parties, renewable fuel producers, importers and exporters, and any business that owned RINs at any time are provided access to enter transactional information involving RINs into EMTS. EMTS averages about 16,000 transactions a day. In 2013 alone, the data network contained approximately 6 million lines of data corresponding to RINs transactions featuring, *inter alia*, financial and fuel volume information.

In addition to RIN transactional information submitted through EMTS, EPA regulations also specify additional reporting requirements for obligated parties, renewable fuel producers/importers/exporters, and others. These requirements include: submission of annual compliance reports by obligated parties and renewable fuel exporters describing their RVOs; the RINs companies are retiring for compliance with their current year RVOs; RINs retired to satisfy any prior year RVO for which a deficit was carried over; and the volume of any RIN deficit that is being carried forward to the next compliance year. *See* 40 C.F.R. § 80.1451(a). In addition, all RIN-owning parties are required to submit quarterly RIN transaction and activity reports that list all RIN transactions in the quarter and provide summary information regarding the total number of RINs purchased, sold, generated, retired, etc. *See* 40 C.F.R. § 80.1451(c)(1)&(2). Companies have submitted RFS data to EPA in a variety of formats since January 1, 2011, including by mail (submitting electronic forms saved on compact disc and hard-copy forms), through the DCFUEL application hosted on EPA's Central Data Exchange and into EMTS. Companies have also submitted data using different file formats including XML, XML conversion tools, spreadsheets, Portable Document Format ("PDF"), web forms, and text files. EPA's fuels programs include sub-programs other than the RFS program, and some companies that participate in one or more sub-programs have submitted non-RFS data within the same file as RFS data so that the records regarding each are effectively comingled.

While RFS transactional information is managed electronically in EMTS, other compliance related data such as that submitted in the RFS2 Activity Report and the RFS2 Annual Compliance Report are less structured or exist only as paper files. This includes some records, potentially responsive to the FOIA request, that were originally submitted to the Agency in one of a variety of media formats such as spreadsheets, text files or PDF documents. The format chosen by the submitter is related to specific compliance and reporting obligations within the RFS program. It is necessary to take these records' media formats into consideration when evaluating the segregability of their individual data elements, as well as their potential to cause competitive harm if publicly released. For example, information submitted as a PDF image will

need to be printed as a hardcopy document and be processed by hand before it is ready for public dissemination. Large volumes of this kind of data would be viewed as non-segregable, while the same information with the individual elements stored in a database may be segregable.

D. Scope of the Perkins Coie FOIA Request

Perkins Coie submitted its original FOIA request on May 1, 2013, seeking the following ten categories of records:

1. All quarterly "RIN activity reports," including any attachments thereto, submitted to EPA pursuant to 40 C.F.R. § 80.1451(c)(1) from January 1, 2011, through May 31, 2013.
2. All annual compliance reports, including any attachments thereto, submitted to EPA pursuant to 40 C.F.R. § 80.1451(a) from January 1, 2011, through May 1, 2013.
3. Documentation, records, and a description from EPA detailing who owns Renewable Identification Numbers (RINs) that were generated during 2012 and in what quantities.
4. Documentation, records, and a description from EPA detailing who owns Renewable Identification Numbers (RINs) that were generated during 2013 and in what quantities.
5. Documentation, records, and a description from EPA detailing how many RINs were generated during 2012.
6. Documentation, records, and a description from EPA detailing how many RINs generated during 2012 were retired during 2012.
7. Documentation, records, and a description from EPA detailing how many RINs generated during 2012 were not retired during 2012 and were carried over into 2013.
8. Documentation, records, and a description from EPA detailing how many RINs generated during 2012 that were not retired during 2012 and were carried over into 2013 remained through May 1, 2013.
9. Documentation, records, and a description from EPA detailing how many RINs have been generated to date during 2013, including but not limited to submissions via EMTS pursuant to 40 C.F.R. § 80.1452.
10. Documentation, records, and a description from EPA detailing how many RINs generated during 2013 have been retired until May 1, 2013, including but not limited to submissions via EMTS pursuant to 40 C.F.R. § 80.1452.

EPA made a good faith effort to understand the request and to identify responsive records. The information sought in Paragraphs 5, 6, 7 and 8 of the request is available on EPA's website at: <http://www.epa.gov/otaq/fuels/rfsdata/index.htm>. This publicly available information fully satisfies these paragraphs of the request. A number of paragraphs of the request seek records related to RIN transactions and RIN ownership information. As described above, RIN transactions are tracked through submissions by regulated parties to EMTS. EPA believes that the following EMTS RIN transaction records, which also contain information related to RIN ownership, are within the scope of the request: (1) RIN generation, (2) RIN buy/sell, (3) RIN separation, and (4) RIN retirement. *See* Request Paragraphs 1, 3, 4, 9, 10. During the time frame of records sought by the request, nearly 1,100 parties entered transactions in EMTS, and there were approximately 16,000 RIN transactions a day.

The request also seeks RFS annual compliance reports submitted from January 1, 2011, through May 1, 2013. Such reports include detailed annual compliance information for roughly 150 refiners and importers of gasoline or diesel fuel, and roughly 30 exporters of renewable fuel, for each of calendar years 2010, 2011 and 2012.

Finally, paragraph 1 of the request seeks all quarterly "RIN Activity Reports" and attachments that were submitted to EPA pursuant to 40 C.F.R. § 80.1451(c)(1) from January 1, 2011, through May 31, 2013. Because RIN Activity Reports are submitted pursuant to 40 C.F.R. § 80.1451(c)(2), and not 40 C.F.R. § 80.1451(c)(1), there are technically no documents that are responsive to this Paragraph of the request. However, EPA interprets the FOIA request as a whole to seek the type of RIN information that is present in both the quarterly RIN Transaction Reports submitted pursuant to 40 C.F.R. § 80.1451(c)(1) and the quarterly RIN Activity Reports submitted pursuant to 40 C.F.R. § 80.1451(c)(2). Therefore, we consider all such reports submitted in the referenced time period to be within the scope of the request. These quarterly reports are submitted by all parties owning RINs during a given quarter. Approximately 9,200 quarterly RIN Transaction and RIN Activity reports are received each quarter.

Numerous companies claimed the requested information as confidential. Additionally, EPA determined that other companies would likely claim this information as confidential. Therefore, pursuant to its regulations, EPA responded to this request and initially denied it in part because some of the requested information was claimed as confidential business information or might be expected to claim as confidential. *See* 40 C.F.R. § 2.204(c). Perkins Coie later filed suit. *Perkins Coie LLP v. McCarthy*, Case 1:13-cv-01799 (D.D.C filed Nov. 11, 2013). After the suit was filed, EPA and counsel from Perkins Coie engaged in extensive settlement discussions in an attempt to narrow and clarify the broad scope of the request. Ultimately, these discussions were not fruitful. Perkins Coie did not modify its FOIA request.

EPA and Perkins Coie conferred and jointly agreed on a process that would allow EPA to fairly evaluate the numerous confidentiality claims. Specifically, the parties agreed that EPA would send out approximately 60 random substantiation requests to affected businesses pursuant to 40 C.F.R. § 2.204(e). *See Perkins Coie*, Case 1:13-cv-01799, Doc. No. 26. A substantiation request provides an affected business the opportunity to support any confidentiality claims.

Additionally, the parties agreed that EPA would issue a Federal Register notice that would allow all other RFS businesses to provide comment on their confidentiality claims. Accordingly, EPA issued a Federal Register notice dated December 11, 2014. *See* 79 Fed. Reg. 73,577 (Dec. 11, 2014). After this process, EPA received 123 responses from the businesses that were contacted by direct letter and through the Federal Register notice.

In response to the Federal Register notice, the FOIA requestor, Perkins Coie, submitted a comment. However, the Perkins Coie comment did not address any confidentiality issues as requested in the Federal Register notice. Instead, Perkins Coie claimed that it had, purportedly in the context of settlement discussions, modified its request, and that EPA should have explained this modification in the Federal Register Notice. As described above, Perkins Coie's request specifically sought information regarding "who owns" RINs. In its comments submitted in response to the Federal Register notice, Perkins Coie stated that the "agency may redact any company identifying information, and that it was sufficient for Perkins Coie to know whether the data pertained to an 'obligated' entity such as a refiner or importer, or an 'unobligated' entity such as a blender, Wall Street or other third party, based on the registration classification of the submitting entity." *See* January 15, 2015 letter from Perkins Coie, at p. 2. In other words, Perkins Coie said it was looking for "raw data by party type." *Id.* at p.1.

As noted above, although the Agency engaged in settlement discussions with Perkins Coie, those negotiations were not fruitful. Perkins Coie never submitted a revised FOIA request. When the settlement discussions failed, both parties jointly explained to the Court in the underlying litigation how EPA would proceed with regard to the CBI claims. EPA followed the process it outlined (some extensions of time were necessary). Perkins Coie was aware in advance that EPA was contacting over 60 parties and issuing a nationwide Federal Register notice. Then, over a month after the Federal Register notice was issued, Perkins Coie decided to attempt a modification of its FOIA request through a comment to the Federal Register Notice. Attempting to change the nature of a FOIA request in the middle of the process is not fair to the affected businesses that are trying to justify their confidentiality claims based on the identified information. Because the requestor agreed to the determination process, this purported modification is too late, and EPA has evaluated the FOIA request as submitted. Our conclusions are set forth below.

Although EPA has evaluated the FOIA request, as submitted, it recognizes that there is only one document type responsive to the request formulated in Perkins Coie's comment letter that contains generic party type information as well as company-specific information. Keeping in mind the unfairness to data submitters noted above, EPA has nevertheless evaluated whether or not release of these records with all company identifying information redacted would divulge CBI. EPA has determined that a relatively small portion of these documents could be released in this fashion, as described in more detail below. Other responsive documents simply do not contain the party-type information requested in Perkins Coie's comment letter. The Agency is not required to create new records that would include such information, as the FOIA does not require the creation of new records in response to a FOIA request. *See Ctr. for Pub. Integrity v. FCC*, 505 F. Supp. 2d 106, 114 (D.D.C. 2007) (concluding that plaintiff's suggestion that agency

delete some data and replace it with data suggested by plaintiff amounts to creation of new records, something not required under FOIA).

DISCUSSION

Exemption 4 of the FOIA exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). In order for information to meet the requirements of Exemption 4, the EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential.

Initial Considerations

EPA’s regulations at 40 C.F.R. § 2.208 state that, in order for business information to be entitled to confidential treatment, the Agency must have determined that, *inter alia*:

- (1) The business has asserted a claim of confidentiality and that claim has not expired, been waived, or been withdrawn;
- (2) The business has shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;
- (3) The information is not, and has not been, reasonably obtainable by a third party without the business’ consent through legitimate means; and
- (4) No statute specifically requires disclosure of the information.

The vast majority of the company substantiations received stated that the companies sought confidential treatment for the information permanently, that no interceding events have negated any previous claims, and that the information has not become stale. In EPA’s analysis of this matter, I have not found any reason to doubt these assertions by the majority of business submitters. As a result, I will determine whether or not the information meets the definition of trade secret or CBI.

I. TRADE SECRET

The definition of “trade secret” under the FOIA is limited to “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a “direct relationship” between the information and the production process. *Id.*

Several of the company substantiations received asserted a claim that some of the information at issue is a trade secret; however, none of the substantiations adequately explained how the Agency's release of any of this information would identify a plan, formula, process, or device. Thus, the companies have not demonstrated how disclosure of any of the information at issue would identify or reveal a trade secret. Consequently, I find that none of the information constitutes a trade secret.

II. CONFIDENTIAL BUSINESS INFORMATION

If the information does not reveal a trade secret, it may still be exempt from release under Exemption 4 of the FOIA if it is CBI, *i.e.*, “commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The terms “commercial” or “financial,” for purposes of Exemption 4 of the FOIA, “should be given their ordinary meanings.” *Public Citizen*, 704 F.2d at 1290 (citing *Washington Post Co. v. HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982)). The information at issue relates to a business, thereby meeting the ordinary definition of “commercial.” Since each company meets the definition of the term “person,” as defined by EPA’s regulations at 40 C.F.R. § 2.201(a), the information was “obtained from a person” as required by Exemption 4 of the FOIA.

Finally, in order to qualify as CBI, the information must be “privileged or confidential.” The companies have claimed this information to be confidential, but no companies have claimed this information to be privileged. The Agency has no indication that the information is subject to a common-law privilege and will therefore limit its discussion to the issue of confidentiality.

Information submitted to the Government on a voluntary basis “is ‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.” *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc), *cert. denied*, 507 U.S. 984 (1993). Information that is required to be submitted to the Government is confidential if its “disclosure would be likely either ‘(1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.’” *Critical Mass*, 975 F.2d at 878 (quoting *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted)).

Required Submission

For a submission to be considered required, an agency must possess the authority to require submission of information to the agency and must exercise this authority. *National Parks*, 498 F.2d at 770; *Center for Auto Safety v. NHTSA*, 244 F.3d 144, 149 (D.C. Cir. 2001); *Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 77-79, 78 n.6 (D.D.C. 2001); see also, *Critical Mass*, 975 F.2d at 880. The information was collected expressly pursuant to EPA's authority under Section 211(o) of the Clean Air Act (“CAA”), enacted as parts of the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007. EPA also has

authority to require the submission of records under the RFS program pursuant to CAA sections 114 and 208.

Because the EPA not only has the authority to require submission of the information, but also has exercised its authority, the companies submissions of the information were required. The Agency must now determine whether the information is confidential. As discussed above, the test for confidentiality of commercial or financial information that is required to be submitted to the Government is governed by *National Parks*, 498 F.2d at 770. Under the *National Parks* test, commercial or financial information that is required to be submitted to the Government is “confidential” if “disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* at 770 (footnote omitted).

1. Impairment

In addressing impairment to the Government's ability to obtain necessary information that is required to be submitted in the future, the inquiry focuses on the likelihood that the Government will receive accurate information from the submitter. In other words, “[i]f the government can enforce the disclosure obligation, and if the resultant disclosure is likely to be accurate, that may be sufficient to prevent any impairment” of the government's ability to obtain information in the future. *Washington Post*, 690 F.2d at 268.

Congress established the RFS program in Section 211(o) of the CAA, enacted as part of the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007. The CAA directs EPA to establish a compliance program and annual percentage standards to ensure that the applicable volumes of renewable fuel are used. EPA implements the RFS through regulations established in 40 C.F.R. part 80 subpart M and requires the submission of compliance reporting information under 40 C.F.R. §§ 80.1451 and 80.1452. Certain additional information must be submitted to EPA for facility registration, and for other purposes. *See* 40 C.F.R. §§ 80.1449, 1450, 1464, 1465, 1466, 1467, and 1469.

As described in more detail below, EPA receives RINs transactional data and other information through EMTS on a daily basis, through quarterly RIN transactional and activity reports submitted by all RIN owners, and annual compliance reports submitted by obligated parties and renewable fuel exporters participating in the RFS program. The statutory and regulatory reporting requirements of the RFS program (as described above) include mechanisms for enforcing accurate responses. *See* 42 U.S.C. §§ 7523, 7524. Since the government can enforce the disclosure requirements and disclosure would not diminish the flow of information to the Agency, I find that the Government's ability to obtain necessary information for the future will not be impaired.

2. Competitive Harm

As set forth in EPA's regulations at 40 C.F.R. § 2.208, required business information is entitled to confidential treatment if:

The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

To meet the competitive harm test, it is not enough to show that the release of the information would likely cause *any* potential for competitive harm. Rather, companies must demonstrate a likelihood of *substantial* competitive harm in order to overcome FOIA's strong presumption of disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 977 (1988).

As set forth in the request for substantiation, in order to support a claim for confidential treatment, the companies must discuss with specificity why release of the information is likely to cause substantial harm to their competitive positions. Further, companies must explain the nature of these harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. Conclusory and generalized allegations of substantial competitive injury do not demonstrate substantial competitive harm. *Public Citizen*, 704 F.2d at 1291. In addition, the companies must explain how their competitors could make use of this information to their detriment.

Pursuant to EPA's regulations at 40 C.F.R. §§ 2.204(f)(6) and 2.204(f)(9), the appropriate EPA program office has been consulted about whether the companies' claims of confidentiality are valid. The EPA program office generally supports the companies' assertions that they face actual competition and would likely suffer significant competitive injury if the information were not kept confidential, although the program office has identified certain segregable materials from the requested records that it does not believe will cause competitive harm if released.

After careful consideration of all of the substantiations submitted by the companies and the EPA program's recommendation, I find that the companies have collectively demonstrated that substantial competitive harm would likely result by publicly releasing some of the information requested. Conferring a competitive advantage is not the desired purpose of the FOIA. *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51-53 (D.C. Cir. 1981). Exemption 4 of the FOIA protects those who are required to submit commercial or financial information to a Government agency from the competitive disadvantages that may result from public disclosure. *Id.* The companies have adequately shown that some of the information at issue is highly sensitive to their commercial operations and that the release of the information would place them at a competitive disadvantage, thereby causing substantial harm to their competitive position.

Therefore, I find that release of the requested information, as further addressed below and in Appendix I, would likely result in unacceptable present and future practical and financial benefits to competitors of the companies, and that the companies would likely suffer substantial competitive injury as a result. For the specific reasons expressed below and in Appendix I, I have determined that a subset of the requested information in Appendix I is entitled to confidential treatment. *See* Appendix I. Each of the primary record formats for the data elements at issue and

their potential to cause competitive harm if released are discussed below. The individual data elements found across the records sources are further described in Appendix I.³

Overview

The three sections below reflect the sources for records that are responsive to the FOIA request. In each section, I will describe the record source and then examine the likelihood of substantial harm to the business's competitive position. Section A includes five sub-sections representing each of the primary EMTS transactions, as engaged in by the companies.⁴ Section A also includes RFS2 EMTS RIN Transaction quarterly report submissions which duplicate the EMTS transaction data and are used for end of quarter confirmation and certification by the submitters. Sections B and C address RIN Activity Reports and Annual Compliance Reports, respectively, and include summaries of the information originally transacted through EMTS to fulfill participating companies' compliance obligations. I have analyzed for each document type whether non-CBI material can be segregated and released. The data elements in each document type are set forth in Appendix I, together with my determinations on whether they constitute CBI and, if not, are segregable and releasable.

A. EMTS Transactions

The FOIA request sought information detailing who owns RINs generated during 2012 and 2013 and in what quantities. The generation and ownership of RINs would include transactions involving RIN generation, buying and selling, separating, and retiring. All RIN transactions are required to be included in the EMTS database.

EMTS Generation Transactions

Renewable fuel producers or importers enter a generation or "generate" transaction in EMTS to create the RINs. The RINs are then moved into the originator's overall RIN holdings.

EMTS generation transaction records include the data elements noted in Appendix I, Table 1. I find the following data elements to be CBI: a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, r, s, w and y. These elements contain information that would cause competitive harm to the submitter if released.

³ The RFS regulations prohibit any person from generating, transferring or using invalid RINs, and include an administrative process for identifying and replacing invalid RINs. *See* 40 CFR §80.1474. This process allows the EPA to identify RINs that it determines are invalid, and notify parties who own these RINs that they cannot transfer the RINs or use them for compliance. *See* 40 CFR §80.1474(b)(5). The EPA may also use more traditional enforcement actions to identify RINs that it alleges are invalid, and notify parties that own these RINs. These actions include issuing Notices of Violations, filing civil or administrative complaints or entering into settlement agreements. In these narrow circumstances, parties who generate, transfer or use RINs that the EPA has determined or alleged to be invalid, have not demonstrated that the release of this information would cause them substantial competitive harm. RINs identified or disclosed by EPA under these narrow circumstances, therefore, are not considered confidential business information.

⁴ EMTS "buy" and "sell" transactions are conducted separately by companies and are sometimes grouped together for discussion purposes because they typically include the same data elements. For this determination they will be addressed separately.

The companies that submitted substantiations provided several examples as to how release of EMTS RIN generate transactions would likely cause them competitive harm. Companies argued that release of generate transaction information would reveal: (1) business trends and operating patterns; (2) plant utilization and process efficiencies; (3) co-products produced; and (4) feedstock and denaturant acquisition patterns.

Before a renewable fuel producer or importer can generate RINs for their renewable fuel they must complete a set of registration requirements. Producers can only generate RINs in EMTS that are consistent with their registration profile and production processes (feedstocks, renewable fuel produced, etc) and that are verified by third-party professional engineers as part of the registration process. Many renewable fuel producers indicated in registration materials submitted to EPA that their plants and production processes can process a variety of feedstocks for conversion to renewable fuel. From these registered feedstocks, certain types may be seasonal in nature (soybean oil, canola, etc.) and producers often utilize combinations of feedstocks and are free to vary their registered processes throughout the year. As a producer generates renewable fuel, they originate an EMTS RIN generate transaction for an individual batch of renewable fuel and enter the associated information including the types of feedstock used, feedstock quantities and the amount of renewable fuel produced from the conversion of feedstock.

If publicly released, an individual EMTS generate transaction would provide sufficient detail for a given company's competitor to determine what types of feedstocks or commodities an individual plant utilizes and in what quantities. Process efficiencies and technologies used at a plant could be determined through the ratio of feedstock used to renewable fuel produced. With a complete set of EMTS generate transactions, competitors could also determine trends of production timing and when individual feedstocks are utilized in the production process.

The release of EMTS generate transactions as individual records would be likely to cause producers substantial harm, as competitors could take advantage of a given company's production timing, operational patterns, fuel capacity limitations and other strategic business decisions made evident by the data release, leading to lost sales and reduced profit margins.

The following data elements are found to be not releasable as CBI: q, v, and x. These elements are "optional" fields that contain submitter comments that may contain references to confidential information. Since the fields are free format text, they would need to be reviewed and evaluated for CBI information on a case by case basis. Additionally, these fields (involving production, source, feedstock and co-product) relate to matters of concern identified by the data submitters. Companies argued that release of generate transaction information would reveal: (1) business trends and operating patterns; (2) co-products produced; and (3) feedstock and denaturant acquisition patterns. Since these fields may contain CBI, and identification of those individual records that do and those that do not contain CBI in these fields would involve individual review of each of approximately 1,112,764 documents, I have determined that the information in these fields is not reasonably segregable into CBI versus non-CBI, and that these

fields must therefore be withheld as CBI. In addition, I find these fields to be non-responsive to the information sought by the request.

The following data element is found to be segregable and releasable: t. The data element for Feedstocks Unit of Measure is segregable from other data elements and does not contain information that could cause competitive harm to the submitter. No comments were received claiming this specific element is CBI.⁵

There are nine EMTS system-generated data elements in EMTS RIN generation transaction records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

EMTS Buy Transactions

When RINs are traded in the marketplace, both the buyer and the seller enter separate transactions in EMTS. The system then matches up the “buy” and “sell” transactions and transfers the RINs between the two company accounts. Records related to a RIN trade must be entered into EMTS within 5 business days after the transaction occurs. Due to the close relationship of buy and sell transactions the respective report’s data elements are for all intents and purposes identical with the notable differences being that the buy reports are from the perspective of the buyers and the sell reports are from the perspective of the sellers. As such, the EMTS Buy Transactions discussion is nearly identical to that of the following EMTS Sell Transactions discussion.

EMTS buy transaction records include the data elements noted in Appendix I, Table 3. I find the following data elements to be CBI: a, b, c, d, e, f, g, h, i, j, l, n, o, q, r, and s. These elements contain information that would cause competitive harm to the submitter and their trading partner if released.

EMTS buy and sell transactions could be analyzed to determine operational patterns and levels from each facility. Certain companies are only active in the marketplace in specific intervals due to a variety of issues, including feedstock availability and compliance reasons. Competitors who knew a company’s operational trends or market timing could target their activities to undercut a company’s marketplace activities.

Companies that buy RINs through EMTS stated they would likely suffer substantial competitive harm through the release of buy transaction information by disclosing: (1) the timing of when the companies purchase RINs (e.g., exploiting compliance flexibilities that potentially allow companies to carry RINs obligations over to the following year); (2) the company’s particular compliance requirements; (3) the company’s preferred RIN providers; and (4) revealing future business plans and strategies.

⁵ Data element u as described in the Appendix was added in 2014, and therefore would not exist in documents within the scope of the request.

Some company commenters specifically discussed RIN purchases in the context of past cases of RIN fraud, which forced affected companies to replace fraudulent RINs previously submitted for compliance under the RFS program. As a part of the related civil enforcement settlements, companies had to develop and implement plans that included their methodology for evaluating RIN providers. In following these plans, some companies restructured their RIN purchasing operations to include “preferred providers,” with which companies had established more reliable business relationships. If the RIN buy-and-sell transaction information was released, a company’s competitors could analyze the information to determine the company’s “preferred providers” for RINs. The company would be likely to incur substantial harm through profit losses, as the competitor could: (1) compete for the same RINs without having to complete costly independent research, and (2) purposely raise the final purchase price paid by the company through competitive bidding that would not otherwise be likely to occur.

One commenter described how even an increase on average of \$.01 per RIN or gallon would have major implications for its RFS compliance costs. The credit marketplace by compliance year typically has over 16 billion credits “active” at some point throughout the compliance year and some companies sell or purchase hundreds of millions of credits.

The release of EMTS buy-and-sell transactions as individual records would be likely to cause companies substantial harm, as competitors could take advantage of a given company’s preferred providers and customer lists, pricing structures, operational trends and other strategic business decisions made evident by the data release, leading to lost sales and reduced profit margins. With the exception of certain data elements that are segregable and are not CBI, as summarized in Appendix I and discussed below, EMTS buy transactions should be therefore withheld as CBI.

The following data elements are found to be not releasable as CBI: p, t, u, v, and w. These elements are “optional” fields that contain submitter comments that may contain references to confidential information. Since the fields are free format text, they would need to be reviewed and evaluated for CBI information on a case by case basis. Since these fields may contain CBI, and identification of those documents that contain CBI in these fields and those that do not would involve individual review of each of approximately 3,137,366 documents, I have determined that the information in these fields is not reasonably segregable into CBI versus non-CBI, and that these fields must therefore be withheld as CBI. In addition, I find these fields to be non-responsive to the information sought by the request.

The following data element is found to be segregable and releasable: m. The data element for Buy Reason Code Text is segregable from other data elements and does not contain information that could cause competitive harm to the submitter. No comments were received claiming this specific element is CBI.⁶

⁶ Data element k as described in the Appendix was added in 2014, and therefore would not exist in documents within the scope of the request.

There are 10 EMTS system-generated data elements in EMTS buy transaction records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

RFS2 EMTS Quarterly RIN Buy Transaction Report

The quarterly RFS2 EMTS RIN buy transaction records include the data elements noted in Appendix I, Table 9. The data in this submission is generated by EMTS as a PDF document and is a compilation of all EMTS Buy Transactions conducted by a party during a given quarter. At the end of each quarter, the party downloads the document for review and verification and sends a signed copy of the report back to EPA to acknowledge their review and certification of the transactions. Because this information is duplicative of EMTS Buy Transactions and the information that is segregable and non-CBI within these documents is being provided to the requestor in the context of EMTS Buy Transaction records such that any production of these records would only provide requestor with duplicative information, and because these records are estimated to number in excess of 5 thousand and are in a PDF format that would require printing and manual redaction to provide releasable information, I find that these 22 data elements (including five system-generated data elements) are non-segregable and not releaseable as CBI.

EMTS Sell Transactions

When RINs are traded in the marketplace, both the buyer and the seller enter separate transactions in EMTS. The system then matches up the “buy” and “sell” transactions and transfers the RINs between the two company accounts. Records related to a RIN sale must be entered into EMTS within 5 business days after the transaction occurs. Due to the close relationship of buy and sell transactions the respective report’s data elements are for all intents and purposes identical with the notable differences being that the buy report is from the perspective of the buyer and the sell report is from the perspective of the seller. As such, the EMTS Sell Transactions discussion is nearly identical to that of the previous EMTS Buy Transactions discussion.

EMTS sell transaction records include the data elements noted in Appendix I, Table 2. I find the following data elements to be CBI: a, b, c, d, e, f, g, h, i, j, l, n, o, q, r, and s. These elements when paired with identifying information of the seller contain information that would cause competitive harm to the submitter and their trading partner if released.

Many commenters who sell RINs described how release of buy and sell transactional information will substantially harm their businesses by revealing: (1) customer lists; (2) pricing structures; (3) operational trends; and (4) market share.

EMTS sell transactions contain the specific trading partner’s identifying information, the quantities of RINs and any renewable fuel purchased, and price paid. If this information was released to a company’s competitor, the competitor could analyze both individual transactions

for pricing information or groups of transactions to determine the company's complete customer base.

EMTS buy and sell transactions could also be analyzed to determine operational patterns and levels from each facility. Certain companies are only active in the marketplace in specific intervals due to a variety of issues, including feedstock availability and compliance reasons. Competitors who knew a company's operational trends or market timing could target their activities to undercut a company's marketplace activities.

Some company commenters specifically discussed RIN purchases in the context of past cases of RIN fraud, which forced affected companies to replace fraudulent RINs previously submitted for compliance under the RFS program. As a part of the related civil enforcement settlements, companies had to develop and implement plans that included their methodology for evaluating RIN providers. In following these plans, some companies restructured their RIN purchasing operations to include "preferred providers," with which companies had established more reliable business relationships. If the RIN buy-and-sell transaction information was released, a company's competitors could analyze the information to determine the company's "preferred providers" for RINs. The company would be likely to incur substantial harm through profit losses, as the competitor could: (1) compete for the same RINs without having to complete costly independent research, and (2) purposely raise the final purchase price paid by the company through competitive bidding that would not otherwise be likely to occur.

One commenter described how even an increase on average of \$.01 per RIN or gallon would have major implications for its RFS compliance costs. The credit marketplace by compliance year typically has over 16 billion credits "active" at some point throughout the compliance year and some companies sell or purchase hundreds of millions of credits.

The release of EMTS buy-and-sell transactions as individual records would be likely to cause companies substantial harm, as competitors could take advantage of a given company's preferred providers and customer lists, pricing structures, operational trends and other strategic business decisions made evident by the data release, leading to lost sales and reduced profit margins. With the exception of certain data elements that may be segregable and individually releaseable, as described in the Appendix, EMTS sell transactions should be therefore withheld as CBI.

The following data elements are found to be not releasable as CBI: p, t, u, v, and w. These elements are "optional" fields that contain submitter comments that may contain references to confidential information. Since the fields are free format text, they would need to be reviewed and evaluated for CBI information on a case by case basis. Since these fields may contain CBI, and identification of those that do and those that do not would involve individual review of each of approximately 5,012,062 documents, I have determined that the information in these fields is not reasonably segregable into CBI versus non-CBI, and that these fields must therefore be withheld as CBI. In addition, I find these fields to be non-responsive to the information sought by the request.

The following data element is found to be segregable and releasable – m. The data element for Sell Reason Code Text is segregable from other data elements and does not contain information that could cause competitive harm to the submitter. No comments were received claiming this specific element is CBI.

The following data element is found to be non-responsive and not releasable as CBI: k. This data element was added for production starting in the 2014 compliance year which is outside the scope of the FOIA request. Therefore it is deemed non-responsive and not releasable as CBI.

There are 10 EMTS system-generated data elements in EMTS sell transaction records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

RFS2 EMTS RIN Sell Transaction Report

The quarterly RFS2 EMTS RIN sell transaction records include the data elements noted in Appendix I, Table 8. The data in this submission is generated by EMTS as a PDF document and is a compilation of all EMTS Sell Transactions conducted by a party during a given quarter. At the end of each quarter, the party downloads the document for review and verification and sends a signed copy of the report back to EPA to acknowledge its review and certification of the transactions. Because: (1) this information is duplicative of that found in EMTS Sell Transactions, (2) the documents contain some information that is CBI, (3) the documents exist in PDF format (which would require printing and hand redaction of CBI to manually process), and (4) the documents number in excess of 6 thousand, I find that these 22 data elements (including five system-generated data elements) are non-segregable and not releaseable as CBI.

EMTS RIN Separation Transactions

A “RIN Separation” transaction typically occurs in EMTS when an RFS obligated party, fuel blender or renewable fuel exporter changes the status of a RIN from being “assigned” to a volume of renewable fuel to being “separated” as an independent credit that can either be used for compliance by the party separating the RIN or transferred to another party for their compliance purposes. The requirements for RIN separation are set forth in 40 C.F.R. § 80.1429.

EMTS RIN separation transaction records include the data elements noted in Appendix I, Table 4. I find the following data elements to be CBI: a, b, c, d, e, f, h, i, k, l, n, o, p, q, and r. These elements contain information that would cause competitive harm to the submitter if released.

Commenters stated that publication of RIN separation transactions would harm their business by disclosing: (1) a proxy of the number of RINs they own or fuel they have purchased, thereby revealing their financial strength; and (2) indicators, through the specific “reason code”

information submitted, of which fuel marketplaces they may be supplying, such as for heating oil and nonroad applications.

Separation transactions provide the total quantity of RINs being separated from the total quantity of fuel in gallons. Separation transactions do not provide which companies the RINs were purchased from or how the RINs are to be used subsequent to the transaction (e.g., for compliance or to be traded to other party). These transactions do not provide price-per-RIN or price-per-gallon fields; however, the number of credits indicated can effectively serve as a “proxy” for financial purchases. Additionally, the RIN separator can utilize optional capabilities to identify specific batches which include identifying information about the producer.

Separation transactions do not state a specific type of fuel (e.g., ethanol, biodiesel, CNG, etc.) beyond the RIN “D-code.” These transactions also do not disclose the specific facility – only the company ID or where a separation event occurred. Particularly in regard to smaller companies that have only one or two active facilities, if such a company’s RIN separation transaction were released, the company’s competitor could reasonably infer where the event separation occurred, thereby providing information regarding the company’s likely customers and negotiating partners in close proximity to their facility.

Separation transactions also provide specific “reason codes,” deriving from 40 C.F.R. § 80.1429. A separation transaction must be associated with an event permitted by RFS program regulations. Most separation transactions are related to the reason code, “receipt of renewable fuel by obligated party.” The next most frequently applied reason code is “blending to produce a transportation fuel.” This latter code, combined with the number of RINs and volume of renewable fuel, provides an indicator of a blender’s operational levels. Other reason codes that are used less frequently or that reference a specific business activity could, by their public disclosure alone, reveal a company’s intended market base or business plans. For example, a renewable fuel can also be used as heating oil or to power a non-road engine and companies may enter reason codes that suggest such use. For smaller producers with single facilities, use of these separation codes therefore may be an indicator of which market the producer is supplying, which is the type of information that is potentially valuable to a company’s competitor that may also be considering that market.

The release of EMTS RIN separation transactions as individual records would be likely to cause companies substantial harm, as competitors could take advantage of a given company’s geographic operating area and by association may be able to infer preferred providers and customers, the company’s market-based business strategies, and also determine a company’s financial strength through analysis of the company’s RINs holdings and fuel volume produced, leading to lost sales and reduced profit margins. With the exception of certain data elements that may be segregable and individually releaseable, as described in Appendix I, EMTS separation transactions should be therefore withheld as CBI.

The following data element is found to be not releasable as CBI: m. This element is an “optional” field that contains submitter comments that may contain references to confidential information. Since the field is free format text, it would need to be reviewed and evaluated for

CBI information on a case by case basis. Since this field may contain CBI, and identification of those that do and those that do not would involve individual review of each of approximately 156,817 documents, I have determined that the information in this field is not reasonably segregable into CBI versus non-CBI, and that this field must therefore be withheld as CBI. In addition, I find this field to be non-responsive to the information sought by the request.

The following data element is found to be segregable and releasable: g. The data element for Separate Reason Code Text is segregable from other data elements and does not contain information that could cause competitive harm to the submitter. No comments were received claiming this specific element is CBI.

There are nine EMTS system-generated data elements in EMTS RIN separation transaction records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

RFS2 EMTS RIN Separation Transaction Report

The quarterly RFS2 EMTS RIN separation transaction records include the data elements noted in Appendix I, Table 10. The data in this submission is generated by EMTS as a PDF document and is a compilation of all EMTS Separation Transactions conducted by a party during a given quarter. At the end of each quarter, the party downloads the document for review and verification and sends a signed copy of the report back to EPA to acknowledge their review and certification of the transactions. Because: (1) this information is duplicative of that found in EMTS Separation Transactions, (2) the documents contain some information that is CBI, (3) the documents exist in PDF format (which would require printing and hand redaction of CBI to manually process) and (4) the documents number in excess of 4 thousand, I find these 20 data elements (including four system-generated data elements) to be non-segregable and not releaseable as CBI.

EMTS RIN Retirement Transactions

RINs are “retired” in EMTS or removed from an active state for nine different reasons based on requirements outlined in 40 C.F.R. part 80 subpart M. Most RINs are retired by obligated parties to satisfy Renewable Volume Obligation (“RVO”) requirements that are a function of the annual RFS percentage standards and their production and import of gasoline and diesel fuel. Exporters also retire RINs to satisfy RVOs that are based on the volume and type of renewable fuel they export.

EMTS RIN retirement transaction records include the data elements noted in Appendix I, Table 5. I find the following data elements to be CBI: a, b, c, d, e, f, g, j, k, l, n, o, p, q, r and s. These elements contain information that would cause competitive harm to the submitter if released.

RIN retirement transactions identify the company name, company ID, D-code of the RIN, RIN quantity, the reason cited for retirement, and which compliance level the RIN is being allocated towards. If the compliance level selected is on a refinery-by refinery-basis, the specific refinery facility ID is also submitted. RINs retirement data are further categorized by compliance levels which are refiner (compliance either overall for company or each individual refinery), importer (overall for company) or exporter (for each renewable fuel exported). RINs can be retired throughout the compliance year, but typically RINs are not retired for compliance purposes by obligated parties until just after the end of the compliance year.

Retirement transactions do not show the company from which the RIN was purchased or the RIN price. Nor do they contain the overall RVO or total amounts of exported renewable fuel retirements. However, RINs retired by obligated parties are essentially derivatives of a company's overall refining production or import numbers. Released as a full set of records, RIN retirement information could aid a company's competitors in determining the company's compliance strategy for RFS. Such strategies typically include which types of RINs are being used and in what quantities. If a company's compliance year retirements change from one year to the next and such information is publicly released, a company's competitors would be made aware of the company's likelihood to show a compliance deficit or that the company is planning to change production levels.

The release of EMTS RIN retirement transactions as individual records would be likely to cause companies substantial harm, as competitors could take advantage of reported information that could provide indications of conventional fuel production volume and show the company's business strategies for compliance or otherwise indicate the company's financial vulnerabilities, which could be exploited within the renewable fuels marketplace, leading to lost sales and reduced profit margins for the company. With the exception of certain data elements that I find segregable and individually releaseable, as identified in Appendix I and described below, EMTS retire transactions should therefore be withheld as CBI.

The following data element is found to be not releasable as CBI: m. This element is an "optional" field that contains submitter comments that may contain references to confidential information. Since the field is free format text, it would need to be reviewed and evaluated for CBI information on a case by case basis. Since this field may contain CBI, and identification of those records that do and those that do not contain CBI in this field would involve individual review of each of approximately 9,589 documents, I have determined that the information in this field is not reasonably segregable into CBI versus non-CBI, and that this field must therefore be withheld as CBI. In addition, I find this field to be non-responsive to the information sought by the request.

The following data element is found to be segregable and releasable: i. The data element for Retire Reason Code Text is segregable from other data elements and does not contain

information that could cause competitive harm to the submitter. No comments were received claiming this specific element is CBI.⁷

There are nine EMTS system-generated data elements in EMTS RIN retirement transaction records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

RFS2 EMTS Quarterly RIN Retirement Transaction Report

The quarterly RFS2 EMTS RIN retirement transaction records include the data elements noted in Appendix I, Table 11. The data in this submission is generated by EMTS as a PDF document and is a compilation of all EMTS Retirement Transactions conducted by a party during a given quarter. At the end of each quarter, the party downloads the document for review and verification and sends a signed copy of the report back to EPA to acknowledge their review and certification of the transactions. Because: (1) this information is duplicative of that found in EMTS Retirement Transactions, (2) the documents contain some information that is CBI, (3) the documents exist in PDF format (which would require printing and hand redaction of CBI to manually process), and (4) the documents number approximately 900, I find these 21 data elements (including four system-generated data elements) to be non-segregable and not releaseable as CBI.

B. Quarterly Activity Reports

The quarterly RIN Activity Report contains volume of renewable fuel owned at the end of a quarter, as well as the number of RINs owned at the start and end of each quarter for both “prior-year” and “current-year” RINs. It also contains summary information on the number of RINs retired and separated during the quarter.

Quarterly RFS Activity Report records include the data elements noted in Appendix I, Table 6. With company identifying information retained, I find the following data elements to be CBI: e, f, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, and y. These elements contain information that would cause competitive harm to the submitter if released.

Release of this information from the quarterly RIN Activity reports would provide a company the opportunity to view a competitor’s RIN balance and gain a competitive advantage. If such compliance information is released, a company’s competitors could exploit it by identifying, analyzing and copying efficiencies in the submitter’s operational processes. A

⁷ Data element h as described in the Appendix was added in 2014, and therefore would not exist in documents within the scope of the request.

competitor could also exploit the information provided in these quarterly reports to undercut a given company's pricing and negotiating ability in particular fuel markets.

The release of this information from quarterly activity reports as individual records would be likely to cause companies substantial harm, as competitors could take advantage of reported information that could show the company's business strategies for compliance or otherwise indicate the company's financial vulnerabilities, which could be exploited within the renewable fuels marketplace, leading to lost sales and reduced profit margins for the company. Many companies argued in their substantiations that the companies' business strategies are "flat" and that their future operations and business plans are likely to remain unchanged over time. The public release of these reports would reveal confidential business plans, provide opportunities for competitor manipulation of the market and lead to substantial harm suffered by the companies. Quarterly activity reports should be therefore withheld as CBI.

The following data element is found to be not releasable as CBI: z. This element is an "optional" field that contains submitter comments that may contain references to confidential information. Since the field is free format text, it would need to be reviewed and evaluated for CBI information on a case by case basis. Since this field may contain CBI, and identification of those documents that contain CBI in this field and those that do not would involve individual review of each of approximately 9,166 documents, I have determined that the information in this field is not reasonably segregable into CBI versus non-CBI, and that this field must therefore be withheld as CBI.

However, the following data elements are found to be segregable and releasable: a, b, c, d, g, part of h, k, and r. Under data element "h" parties either provide a facility ID or indicate their "compliance basis." The facility ID can be redacted and if that is done the fields a, b, c, d, and g, part of h, k, and r may be released. Release of data elements k and r (volume of renewable fuel owned at the end of the quarter and prior year RFS2 RINS expired in EMTS at the end of the quarter) would not cause competitive harm. Elements k and r, on their own with only compliance basis information is not enough to tie the data to the submitter. The other elements in the Activity Report could be used to identify the submitting companies based on their size in the marketplace. These data elements are segregable from other data elements and do not contain information that could cause competitive harm to the submitter. There are two system-generated data elements in DCFUEL activity report records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

The DCFUEL database contains the majority of Quarterly Activity Report data and the above analysis for activity report data was based on the Agency's ability to extract data from the database; however, a quantity of unprocessed data is pending input to the database. This unprocessed quantity represents data that was received by EPA, but could not be uploaded due to problems such as corrupted files or damaged media. Some quarterly activity report submissions were made on compact discs, floppy disks or flash drives, but the media was damaged or

otherwise rendered unreadable during shipment. In some cases, hard copy reports accompanied the submission and could potentially be a source of responsive data. Due to the quantity, variety of formats and storage of the records, this quantity of data is deemed to be non-segregable and therefore not releasable.

C. Annual Compliance Reports

Any obligated party described in 40 C.F.R. § 80.1406 (i.e., refiners and importers of gasoline/diesel) or exporter of renewable fuel described in 40 C.F.R. § 80.1430 must submit reports to EPA on an annual basis as described in 40 C.F.R. § 80.1451(a)(1). The format and precise data elements of the RFS program's annual compliance report has varied over compliance years. The annual reports currently include the information required by 40 C.F.R. § 80.1451(a)(1) and the other data elements listed in Appendix I, Table 7.

The RFS program provides companies who are required to file annual reports numerous flexibilities to comply with the RFS:

- A participating company may acquire RINs for compliance by purchasing renewable fuel with assigned RINs or, alternatively, purchasing RINs that have been separated from renewable fuel;
- RFS categorizes renewable fuels based on definitional criteria such as feedstock and GHG reductions into five categories of renewable fuel that are referred to by "D-Codes." 40 C.F.R. § 80.1425(g). Certain D-codes can be used to satisfy one or more of the RFS standards through "nesting" of RINs in calculations. For example, a cellulosic biofuel RIN can be used to comply with three of the four RFS percentage standards (cellulosic biofuel, advanced biofuel and total renewable fuel), while a RIN generated for corn starch ethanol can only qualify to satisfy the total renewable fuel percentage standard. Obligated parties satisfy their four renewable volume obligations ("RVOs") corresponding to the four annual RFS percentage standards by using a combination of nested D-codes;
- Companies may carry over RIN credits for up to one year, but may only satisfy up to 20 percent of an RVO with a prior-year RIN;
- Companies may carry an RVO credit deficit in whole or in part for up to one year; and
- Companies may generally meet compliance obligations as a single business entity or on a refinery-by-refinery basis.
- Companies may meet their RVO for cellulosic biofuel through the purchase of cellulosic waiver credits from EPA rather than the accumulation of cellulosic biofuel RINs. 40 C.F.R. § 80.1456.

The annual compliance report details an individual company's overall conventional fuel production/import or renewable fuel export, RVO and how they are satisfying the RVO through the retirement of RINs or through the use of other compliance flexibilities.

RFS2 annual compliance report records include the data elements noted in Appendix I, Table 7. I find the following data elements to be CBI: a, b, g, h, i, k, l, m, n, o, p, q, s, t, u, v, w, x, y, z, aa, ab, and ac. These elements would cause competitive harm to the submitter if released.

Several companies commented how release of annual compliance reports would harm a company by: (1) revealing their compliance strategies under the RFS; (2) undermining purchase negotiations; and (3) creating a likelihood of market manipulation. One commenter specifically described how release of annual reports would likely impact regulated parties who report their RVOs on a “refinery-by-refinery” level instead of corporate level compliance. Annual compliance reports under the RFS program detail precise production numbers for each refinery in a format that would allow a competitor to understand frequency and maintenance of outages at individual refineries. Such information could be exploited by a company’s competitor and incorporated into the competitor’s production level or maintenance planning, providing them an advantage in the marketplace.

Annual compliance reports are also specific enough to show: (1) if a company is currently carrying a RIN deficit and in what quantity; (2) the total quantity from each of the five types of RINs or cellulosic waiver credits used for compliance; and (3) the vintage of the RINs used. Within an annual compliance report, this information is combined with a company’s overall gasoline or diesel production, imports, or renewable fuel exports. Knowledgeable competitors or other prospective transactional partners could gain a competitive advantage by analyzing an individual company’s annual compliance report and then determining the company’s compliance strategy, the company’s compliance needs, and also the company’s overall position in the marketplace.

The release of annual compliance reports as individual records would be likely to cause companies substantial harm, as competitors could take advantage of reported information that could show the company’s business strategies for compliance or otherwise indicate the company’s financial vulnerabilities, which could be exploited within the renewable fuels marketplace, leading to lost sales and reduced profit margins for the company. The public release of these reports would reveal confidential business plans, provide opportunities for competitor manipulation of the market and lead to substantial harm suffered by the companies. Annual compliance reports should be therefore withheld as CBI.

The following data element is found to be not releasable as CBI: ad. This element is an “optional” field that contains submitter comments that may contain references to confidential information. Since the field is free format text, it would need to be reviewed and evaluated for CBI information on a case by case basis. Given that these fields are optional and free format, EPA understands that filers use these fields in different ways for their internal business purposes, and therefore believes that disclosure of this field would likely cause competitive harm. Since this field may contain CBI, and identification of those that do and those that do not would involve individual review of each of approximately 673 documents, I have determined that the information in this field is not reasonably segregable into CBI versus non-CBI, and that this field must therefore be withheld as CBI.

The following data elements are found to be segregable and releasable: c, d, e, f, j, and r. These data elements are segregable from other data elements and do not contain information that could cause competitive harm to the submitter. No comments were received claiming these specific element are CBI.

There are two system-generated data elements in DCFUEL annual compliance report records that are non-responsive to the FOIA request. EMTS generates and tracks certain information necessary to enforce database business rules and to ensure the reliable operation of the data system. This information does not reflect any user generated data and is therefore withheld as non-responsive.

The DCFUEL database contains the majority of Annual Compliance Report data and the above analysis for annual compliance report data was based on the Agency's ability to extract data from the database; however, a quantity of unprocessed data is pending input to the database. This unprocessed quantity represents data that was received by EPA, but could not be uploaded due to problems such as corrupted files or damaged media. Some annual compliance report submissions were made on compact discs, floppy disks or flash drives, but the media were damaged or otherwise rendered unreadable during shipment. In some cases, hard copy reports accompanied the submission and could potentially be a source of responsive data. Due to the quantity, variety of formats and storage of the records, this quantity of data is deemed to be non-segregable and therefore not releasable. Please see the following section on segregability for additional discussion.

Segregability

The FOIA requires the following:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, *and the exemption under which the deletion is made*, shall be indicated on the released portion of the record unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, *and the exemption under which the deletion is made*, shall be indicated at the place in the record where such deletion is made." 5 U.S.C. § 552(b).

In meeting this obligation to segregate out and disclose non-exempt portions of requested records, agencies should be mindful that "[t]he focus of the FOIA is information, not documents," and that as a rule, "non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." *Mead Data Cent., Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). This analysis is frequently impacted by volume of material at issue. *See Mead Data Cent., Inc.*, 566 F.2d at 261 & n.55. *See also, FlightSafety Serv. Corp. v. Dep't of Labor*, 326 F.3d 607, 613 (5th Circ. 2003) (concluding that the documents contained no reasonably segregable information because, inter alia, "any disclosable information is so inextricably intertwined with the exempt, confidential information

that producing it would require *substantial agency resources* and produce a document of little information value.” (*Emphasis added*)).

Moreover, an agency need not produce any material from records where “the excision of exempt information would . . . produce an edited document with little informational value.” *Mays v. Drug Enforcement Admin.*, 234 F.3d 1324, 1327 (D.C. Cir. 2000) (citation omitted); *see also, Brown v. DOJ*, 734 F. Supp. 2d, 99, 110-11 (D.D.C. 2010) (finding agency’s withholdings of plaintiff’s name, cities, and file numbers proper where “there is no indication that the [agency] acted in bad faith in segregating and releasing nonexempt information in the nearly 1,000 pages released to plaintiff” and “[agency] need not expend substantial time and resources to ‘yield a product with little, if any, informational value’”).

In addition, segregability is not determined based upon an evaluation of whether nonexempt portions of documents would be helpful to the requestor if segregated and released. *See Stolt-Nielsen Transp. Group, Ltd. v. United States*, 534 F.3d 728, 734 (D.C. Cir. 2008) (rejecting agency’s assertion that “the redacted documents without names and dates would provide no meaningful information,” and declaring that information need not be helpful to the person requesting it in order to require that the government must disclose it); *see also Mead Data Content v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 n.55 (D.C. Cir. 1977) (stating that while “information content” is a legitimate consideration, it “does not mean that a court should approve an agency withholding because of the court’s low estimate of the value to the requestor of the information withheld”).

As discussed in detail above and displayed in Appendix I, EPA has carefully considered whether non-CBI can be reasonably segregated from CBI. Several factors related to the responsive documents’ format and their volume contributed to EPA’s finding that some information is not segregable. For example, as noted above, several of the EMTS transactions discussed include optional fields that include unique text submitted by companies that frequently includes company CBI. Between January 2011 and May 2013, EMTS “sell” transactions alone produced over 1 million unique transaction comments and nearly 4 million document name comments that would each require individual review for CBI. Reviewing and parsing through each of these millions of comment fields to produce segregable non-CBI is not reasonable.

In consultation with OTAQ, I have also determined that segregating non-CBI information from high volumes of quarterly transaction reports that are stored in pdf format would not be reasonable. The program maintains 7,400 quarterly transaction reports in pdf form responsive to the scope of the FOIA request and reviewing each is not reasonable or required by the FOIA.

Finally, as also noted above, quarterly activity reports and annual compliance reports have been submitted to the Agency in varying media formats since 2011, including in hard copy paper form, on compact discs, on floppy discs and on flash drives. In some cases, the reports submitted have not yet been copied into electronic databases and OTAQ estimates that it currently maintains approximately 10,000 file folders organized by company that feature reports submitted in one or more of the media listed above. Therefore, because of the great resource burden that would be required for OTAQ personnel to review such file folders one-by-one to

potentially segregate non-CBI from CBI, I find the non-CBI in these folders to be non-segregable in the context of this FOIA request.

Emissions data

In consultation with the EPA program office, I have determined that the information at issue does not constitute emissions data as defined under 40 C.F.R. 2.301(a)(2). The RFS program requires the use of increasing volumes of renewable products in transportation fuel, with only some of those renewable products being required to attain lifecycle GHG emissions reductions as compared to 2005 baseline transportation fuels. In light of the structure of the RFS program, EPA's current assessment is that the information sought by the requester is not sufficiently related to attainment of product lifecycle GHG emissions reductions to constitute "emission data."

CONCLUSION

I find that the information claimed as confidential is not a trade secret, but that the information sought through the FOIA request (with limited exceptions identified in Appendix I) is CBI and, therefore, is within the scope of Exemption 4 of the FOIA. Pursuant to EPA's regulations at 40 C.F.R. § 2.205(f), this constitutes the final EPA determination concerning your business confidentiality claim. This determination may be subject to judicial review under 5 U.S.C. §§ 701 *et seq.* By agreement with the FOIA requestor, EPA will not release any information or documents subject to this CBI determination until the court rules on the merits in the underlying FOIA action, *Perkins Coie, LLP v. McCarthy*, No. 13-1799 (D.D.C.). *See also* 40 C.F.R. § 2.205(f)(2).

Should you have any questions concerning this matter, please call Scott Albright, at (202) 564-2884.

Sincerely,



Kevin Miller
Assistant General Counsel
General Law Office

kmm
4/15/15

cc: HQ FOI Office
EPA's Office of Transportation and Air Quality
John Henault, Perkins Coie LLP, Counsel for Plaintiffs
Justin Savage, Hogan Lovells US LLP, Counsel for Intervenors

APPENDIX I: This Appendix includes a set of tables of the data elements by report source which are implicated by the Plaintiff's FOIA request as the elements are maintained by EPA in multiple source records. The source records are EMTS Generate Transactions, EMTS Buy Transactions, EMTS Separate Transactions, EMTS Retire Transactions, RFS Quarterly Activity Reports, RFS Annual Compliance Reports, Quarterly Sell PDF Transaction Report, Quarterly Buy PDF Transaction Report, Quarterly Separate PDF Transaction Report, and Quarterly Retire PDF Transaction Report.

Table 1: EMTS GENERATE TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
a	RIN Originator Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
b	RIN Originator Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
c	RIN Quantity	Y	Segregable	Data segregable, but not releasable as CBI	N
d	Batch Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
e	Fuel D-Code	Y	Segregable	Data segregable, but not releasable as CBI	N
f	Production Process	Y	Segregable	Data segregable, but not releasable as CBI	N
g	Fuel Category Code Text	Y	Segregable	Data segregable, but not releasable as CBI	N
h	Fuel Production Date	Y	Segregable	Data segregable, but not releasable as CBI	N
i	Denaturant Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
j	Equivalence Value	Y	Segregable	Data segregable, but not releasable as CBI	N
k	Renewable Fuel Producer Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
l	Renewable Fuel Producer Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
m	Renewable Fuel Producer Facility Number	Y	Segregable	Data segregable, but not releasable as CBI	N
n	RIN Originator Facility Number	Y	Segregable	Data segregable, but not releasable as CBI	N
o	RIN Originator Import Facility Number	Y	Segregable	Data segregable, but not releasable as CBI	N
p	RIN Originator Batch Number	Y	Segregable	Data segregable, but not releasable as CBI	N
q	Production Source Comment	Y	Non-Segregable	Data segregable, but not releasable as CBI	N
r	Feedstocks	Y	Segregable	Data segregable, but not releasable as CBI	N

Table 1: EMTS GENERATE TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
s	Feedstocks Amount	Y	Segregable	Data segregable, but not releasable as CBI	N
t	Feedstocks Unit of Measure	N	Segregable	Data segregable and non-CBI	Y
u	QAP Service Type	Y	Segregable	Data segregable, but not releasable as CBI	N
v	Feedstock Comment	Y	Non-Segregable	Data not segregable	N
w	Co-Product	Y	Segregable	Data segregable, but not releasable as CBI	N
x	Co-Product Comment	Y	Non-Segregable	Data not segregable	N
y	RIN Year	Y	Segregable	Data segregable, but not releasable as CBI	N
System	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
System	Data Preparer	N	Segregable	System Generated; not responsive	N
System	EMTS Generate Transaction ID	N	Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Submission Method	N	Segregable	System Generated; not responsive	N
System	Submitter	Y	Segregable	System Generated; not responsive	N

Table 2: EMTS SELL TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
a	Seller Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
b	Seller Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
c	Buyer Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
d	Buyer Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
e	Ptd Number	Y	Segregable	Data segregable, but not releasable as CBI	N
f	RIN Quantity	Y	Segregable	Data segregable, but not releasable as CBI	N
g	Batch Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
h	Fuel D-Code	Y	Segregable	Data segregable, but not releasable as CBI	N
i	Assignment Code Text	Y	Segregable	Data segregable, but not releasable as CBI	N
j	RIN Year	Y	Segregable	Data segregable, but not releasable as CBI	N
k	QAP Service Type	Y	Segregable	Data segregable, but not releasable as CBI	N
l	Transfer Date	Y	Segregable	Data segregable, but not releasable as CBI	N
m	Sell Reason Code Text	N	Segregable	Data segregable and non-CBI	Y
n	Price Per Gallon	Y	Segregable	Data segregable, but not releasable as CBI	N
o	Price Per RIN	Y	Segregable	Data segregable, but not releasable as CBI	N
p	Transaction Comment	Y	Non-Segregable	Data not segregable	N
q	Generate Organization ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
r	Generate Facility ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
s	Generate Batch Number (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
t	Public Supporting Document (text box 1)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
u	Public Supporting Document ID (text box 1)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
v	Public Supporting Document (text box 2)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N

Table 2: EMTS SELL TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
w	Public Supporting Document (text box 2)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
System	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
System	Data Preparer	N	Segregable	System Generated; not responsive	N
System	EMTS Buy Transaction ID	N	Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Matched EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Submission Method	N	Segregable	System Generated; not responsive	N
System	Submitter	Y	Segregable	System Generated; not responsive	N

Table 3: EMTS BUY TRANSACTIONS

Source	Field Name	CBI	Segregable	Comment	Releasable
a	Buyer Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
b	Buyer Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
c	Seller Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
d	Seller Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
e	Ptd Number	Y	Segregable	Data segregable, but not releasable as CBI	N
f	RIN Quantity	Y	Segregable	Data segregable, but not releasable as CBI	N
g	Batch Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
h	Fuel D-Code	Y	Segregable	Data segregable, but not releasable as CBI	N
i	Assignment Code Text	Y	Segregable	Data segregable, but not releasable as CBI	N
j	RIN Year	Y	Segregable	Data segregable, but not releasable as CBI	N
k	QAP Service Type	Y	Segregable	Data segregable, but not releasable as CBI	N
l	Transfer Date	Y	Segregable	Data segregable, but not releasable as CBI	N
m	Buy Reason Code Text	N	Segregable	Data segregable and non-CBI	Y
n	Price Per RIN	Y	Segregable	Data segregable, but not releasable as CBI	N
o	Price Per Gallon	Y	Segregable	Data segregable, but not releasable as CBI	N
p	Transaction Comment	Y	Non-Segregable	Data not segregable	N
q	Generate Organization ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
r	Generate Facility ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
s	Generate Batch Number (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
t	Public Supporting Document (text box 1)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
u	Public Supporting Document ID (text box 1)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
v	Public Supporting Document (text box 2)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N

Table 3: EMTS BUY TRANSACTIONS

Source	Field Name	CBI	Segregable	Comment	Releasable
w	Public Supporting Document (text box 2)	Y	Non-Segregable	Data non-segregable, but not releasable as CBI	N
System	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
System	Data Preparer	N	Segregable	System Generated; not responsive	N
System	EMTS Buy Transaction ID	N	Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Matched EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Submission Method	N	Segregable	System Generated; not responsive	N
System	Submitter	Y	Segregable	System Generated; not responsive	N

Table 4: EMTS Separate Transactions

	Field Name	CBI	Segregable	Comment	Releasable
a	RIN Separator Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
b	RIN Separator Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
c	Transaction Date	Y	Segregable	Data segregable, but not releasable as CBI	N
d	RIN Quantity	Y	Segregable	Data segregable, but not releasable as CBI	N
e	Batch Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
f	Fuel D-Code	Y	Segregable	Data segregable, but not releasable as CBI	N
g	Separate Reason Code Text	N	Segregable	Data segregable and non-CBI	Y
h	Assignment Code	Y	Segregable	Data segregable, but not releasable as CBI	N
i	RIN Year	Y	Segregable	Data segregable, but not releasable as CBI	N
j	QAP Service Type	Y	Segregable	Data segregable, but not releasable as CBI	N
k	Blender Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
l	Blender Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
m	Transaction Comment	Y	Non-Segregable	Data not segregable	N
n	Generate Organization ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
o	Generate Facility ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
p	Generate Batch Number (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
q	Document ID	Y	Non-Segregable	Data not segregable, but not releasable as CBI	N
r	Document Name	Y	Non-Segregable	Data not segregable, but not releasable as CBI	N
System	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
System	Data Preparer	N	Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Segregable	System Generated; not responsive	N

Table 4: EMTS Separate Transactions

Field Name		CBI	Segregable	Comment	Releasable
System	Submission Method	N	Segregable	System Generated; not responsive	N
System	Submitter	Y	Segregable	System Generated; not responsive	N
System	Separation Transaction ID	N	Segregable	System Generated; not responsive	N

Table 5: EMTS RETIRE TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
a	RIN Retirement Company ID	Y	Segregable	Data segregable, but not releasable as CBI	N
b	RIN Retirement Company Name	Y	Segregable	Data segregable, but not releasable as CBI	N
c	RIN Quantity	Y	Segregable	Data segregable, but not releasable as CBI	N
d	Batch Volume	Y	Segregable	Data segregable, but not releasable as CBI	N
e	Fuel D-Code	Y	Segregable	Data segregable, but not releasable as CBI	N
f	Assignment Code Text	Y	Segregable	Data segregable, but not releasable as CBI	N
g	RIN Year	Y	Segregable	Data segregable, but not releasable as CBI	N
h	QAP Service Type	Y	Segregable	Data segregable, but not releasable as CBI	N
i	Retire Reason Code Text	N	Segregable	Data segregable and non-CBI	Y
j	Compliance Year	Y	Segregable	Data segregable, but not releasable as CBI	N
k	Compliance Level Code Text	Y	Segregable	Data segregable, but not releasable as CBI	N
l	Compliance Facility ID	Y	Segregable	Data segregable, but not releasable as CBI	N
m	Transaction Comment	Y	Non-Segregable	Data not segregable	N
n	Generate Organization ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
o	Generate Facility ID (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
p	Generate Batch Number (non-FIFO)	Y	Segregable	Data segregable, but not releasable as CBI	N
q	Document ID	Y	Non-Segregable	Data not segregable, but not releasable as CBI	N
r	Document Name	Y	Non-Segregable	Data not segregable, but not releasable as CBI	N
s	Transaction Date	Y	Segregable	Data segregable, but not releasable as CBI	N
System	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
System	Data Preparer	N	Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Segregable	System Generated; not responsive	N

Table 5: EMTS RETIRE TRANSACTIONS

	Field Name	CBI	Segregable	Comment	Releasable
System	EMTS Transaction ID	N	Segregable	System Generated; not responsive	N
System	Submission Method	N	Segregable	System Generated; not responsive	N
System	Submitter	Y	Segregable	System Generated; not responsive	N
System	Retire Transaction ID	N	Segregable	System Generated; not responsive	N

Table 6: RFS QUARTERLY ACTIVITY REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Report Number	N	Segregable	Data not CBI and Segregable	Y
b	Report Type	N	Segregable	Data not CBI and Segregable	Y
c	CBI	N	Segregable	Data not CBI and Segregable	Y
d	Report Date	N	Segregable	Data not CBI and Segregable	Y
e	Company ID	Y	Segregable	Data Segregable but CBI	N
f	Company Name	Y	Segregable	Data Segregable but CBI	N
g	Compliance Period Code	N	Segregable	Data not CBI and Segregable	Y
h	Compliance Basis/Facility ID	N/Y	Segregable	Data Segregable- Compliance Basis not CBI/but facility ID CBI	Y/N
i	Compliance Year	Y	Segregable	Data Segregable but CBI	N
j	RIN Status (assigned/separated)	Y	Segregable	Data Segregable but CBI	N
k	Volume of renewable fuel owned at the end of the quarter	Y/N	Segregable	Data Segregable - CBI if company identifying information present; non-CBI otherwise	N/Y
l	Prior-year RFS2 RINs owned at the start of the quarter in EMTS	Y	Segregable	Data Segregable but CBI	N
m	Prior-year RFS2 RINs purchased in EMTS	Y	Segregable	Data Segregable but CBI	N
n	Prior-year RFS2 RINs sold in EMTS	Y	Segregable	Data Segregable but CBI	N
o	Prior-year RFS2 RINs separated in EMTS	Y	Segregable	Data Segregable but CBI	N
p	Prior-year RFS2 RINs retired in EMTS	Y	Segregable	Data Segregable but CBI	N
q	Prior-year RFS2 RINs owned at the end of the quarter in EMTS	Y	Segregable	Data Segregable but CBI	N
r	Prior-year RFS2 RINs expired in EMTS at the end of the quarter (Current Year - 2 only)	Y/N	Segregable	Data Segregable - CBI if company identifying information present; non-CBI otherwise	N/Y
s	Current-year RFS2 RINs owned at the start of the quarter in EMTS	Y	Segregable	Data Segregable but CBI	N

Table 6: RFS QUARTERLY ACTIVITY REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
t	Current-year RFS2 RINs purchased in EMTS	Y	Segregable	Data Segregable but CBI	N
u	Current-year RFS2 RINs sold in EMTS	Y	Segregable	Data Segregable but CBI	N
v	Current-year RFS2 RINs separated in EMTS	Y	Segregable	Data Segregable but CBI	N
w	Current-year RFS2 RINs retired in EMTS	Y	Segregable	Data Segregable but CBI	N
x	Current-year RFS2 RINs owned at the end of the quarter in EMTS	Y	Segregable	Data Segregable but CBI	N
y	RFS2 RINs generated during the quarter in EMTS	Y	Segregable	Data Segregable but CBI	N
z	Submission Comment	Y	Non-Segregable	Data Non-Segregable	N
System	CDX Submission ID	Y	Non-Segregable	System Generated; not responsive	N
System	Submitter	Y	Non-Segregable	System Generated; not responsive	N

Table 7: RFS ANNUAL COMPLIANCE REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Company ID	Y	Segregable	Data Segregable but CBI	N
b	Company Name	Y	Segregable	Data Segregable but CBI	N
c	Report Number	N	Segregable	Data not CBI and Segregable	Y
d	Report Type	N	Segregable	Data not CBI and Segregable	Y
e	CBI	N	Segregable	Data not CBI and Segregable	Y
f	Report Date	N	Segregable	Data not CBI and Segregable	Y
g	Compliance Year	Y	Segregable	Data Segregable but CBI	N
h	Renewable Volume Obligation (RVO)	Y	Segregable	Data Segregable but CBI	N
i	Gasoline and Diesel Production/ Renewable Fuel Export Volume	Y	Segregable	Data Segregable but CBI	N
j	Renewable Fuel Standard Value/Equivalence Value	N	Segregable	Data not CBI and Segregable	Y
k	Cellulosic Biofuel Waiver Credits Payment ID	Y	Segregable	Data Segregable but CBI	N
l	Cellulosic Biofuel Waiver Credits Payment Method	Y	Segregable	Data Segregable but CBI	N
m	Cellulosic Biofuel Waiver Credits Used	Y	Segregable	Data Segregable but CBI	N
n	Compliance Basis/Facility ID	Y	Segregable	Data Segregable but CBI	N
o	Compliance Facility Number	Y	Segregable	Data Segregable but CBI	N
p	Renewable Fuel Export Type	Y	Segregable	Data Segregable but CBI	N
q	Prior Year Deficit	Y	Segregable	Data Segregable but CBI	N
r	Renewable Volume Obligation (Name)	N	Segregable	Data not CBI and Segregable	Y
s	Prior-year RFS2 RINs used, D code of 3	Y	Segregable	Data Segregable but CBI	N
t	Prior-year RFS2 RINs used, D code of 4	Y	Segregable	Data Segregable but CBI	N

Table 7: RFS ANNUAL COMPLIANCE REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
u	Prior-year RFS2 RINs used, D code of 5	Y	Segregable	Data Segregable but CBI	N
v	Prior-year RFS2 RINs used, D code of 6	Y	Segregable	Data Segregable but CBI	N
w	Prior-year RFS2 RINs used, D code of 7	Y	Segregable	Data Segregable but CBI	N
x	Current-year RFS2 RINs used, D code of 3	Y	Segregable	Data Segregable but CBI	N
y	Current-year RFS2 RINs used, D code of 4	Y	Segregable	Data Segregable but CBI	N
z	Current-year RFS2 RINs used, D code of 5	Y	Segregable	Data Segregable but CBI	N
aa	Current-year RFS2 RINs used, D code of 6	Y	Segregable	Data Segregable but CBI	N
ab	Current-year RFS2 RINs used, D code of 7	Y	Segregable	Data Segregable but CBI	N
ac	Deficit RVO	Y	Segregable	Data Segregable but CBI	N
ad	Submission Comment	Y	Non-Segregable	Data non-segregable and CBI	N
ae	CDX Submission ID	Y	Segregable	System Generated; not responsive	N
af	Submitter	Y	Segregable	System Generated; not responsive	N

Table 8: QUARTERLY SELL PDF TRANSACTION REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Seller Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
b	Seller Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
c	Buyer Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
d	Buyer Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
e	RIN Year	Y	Non-Segregable	Data non-segregable and CBI	N
f	Fuel D-Code	Y	Non-Segregable	Data non-segregable and CBI	N
g	Assignment Code Text	Y	Non-Segregable	Data non-segregable and CBI	N
h	Batch Volume	Y	Non-Segregable	Data non-segregable and CBI	N
i	RIN Quantity	Y	Non-Segregable	Data non-segregable and CBI	N
j	Ptd Number	Y	Non-Segregable	Data non-segregable and CBI	N
k	Generate Organization ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
l	Generate Facility ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
m	Generate Batch Number (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
n	Sell Reason Code Text	N	Non-Segregable	Data non-segregable and not CBI	N
o	Document ID	Y	Non-Segregable	Data segregable from source 2, 3, but not releasable as CBI	N
p	Document Name	Y	Non-Segregable	Data segregable from source 2, 3, but not releasable as CBI	N
q	Transaction Comment	Y	Non-Segregable	Data not segregable	N
System	CDX Submission ID	Y	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Non-Segregable	System Generated; not responsive	N

Table 9: QUARTERLY BUY PDF TRANSACTION REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Buyer Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
b	Buyer Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
c	Seller Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
d	Seller Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
e	RIN Year	Y	Non-Segregable	Data non-segregable and CBI	N
f	Fuel D-Code	Y	Non-Segregable	Data non-segregable and CBI	N
g	Assignment Code Text	Y	Non-Segregable	Data non-segregable and CBI	N
h	Batch Volume	Y	Non-Segregable	Data non-segregable and CBI	N
i	RIN Quantity	Y	Non-Segregable	Data non-segregable and CBI	N
j	Ptd Number	Y	Non-Segregable	Data non-segregable and CBI	N
k	Generate Organization ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
l	Generate Facility ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
m	Generate Batch Number (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
n	Buy Reason Code Text	N	Non-Segregable	Data non-segregable and not CBI	N
o	Document ID	Y	Non-Segregable	Data non-segregable and CBI	N
p	Document Name	Y	Non-Segregable	Data non-segregable and CBI	N
q	Transaction Comment	Y	Non-Segregable	Data not segregable	N
System	CDX Submission ID	Y	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Non-Segregable	System Generated; not responsive	N

Table 10: QUARTERLY SEPARATE PDF TRANSACTION REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Separator Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
b	Separator Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
c	RIN Year	Y	Non-Segregable	Data non-segregable and CBI	N
d	Fuel D-Code	Y	Non-Segregable	Data non-segregable and CBI	N
e	Assignment Code	Y	Non-Segregable	Data non-segregable and CBI	N
f	Batch Volume	Y	Non-Segregable	Data non-segregable and CBI	N
g	Blender Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
h	Blender Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
i	RIN Quantity	Y	Non-Segregable	Data non-segregable and CBI	N
j	Separate Reason Code Text	N	Non-Segregable	Data non-segregable but not CBI	N
k	Generate Organization ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
l	Generate Facility ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
m	Generate Batch Number (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
n	Document ID	Y	Non-Segregable	Data non-segregable and CBI	N
o	Document Name	Y	Non-Segregable	Data non-segregable and CBI	N
p	Transaction Comment	Y	Non-Segregable	Data not segregable	N
System	CDX Submission ID	Y	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Non-Segregable	System Generated; not responsive	N

Table 11: QUARTERLY RETIRE PDF TRANSACTION REPORTS

	Field Name	CBI	Segregable	Comment	Releasable
a	Retirement Company ID	Y	Non-Segregable	Data non-segregable and CBI	N
b	Retirement Company Name	Y	Non-Segregable	Data non-segregable and CBI	N
c	RIN Year	Y	Non-Segregable	Data non-segregable and CBI	N
d	Fuel D-Code	Y	Non-Segregable	Data non-segregable and CBI	N
e	Assignment Code Text	Y	Non-Segregable	Data non-segregable and CBI	N
f	Batch Volume	Y	Non-Segregable	Data non-segregable and CBI	N
g	RIN Quantity	Y	Non-Segregable	Data non-segregable and CBI	N
h	Generate Organization ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
i	Generate Facility ID (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
j	Generate Batch Number (non-FIFO)	Y	Non-Segregable	Data non-segregable and CBI	N
k	Retire Reason Code Text	N	Non-Segregable	Data non-segregable and non-CBI	N
l	Compliance Year	Y	Non-Segregable	Data non-segregable and CBI	N
m	Compliance Level Code	Y	Non-Segregable	Data non-segregable and CBI	N
n	Compliance Facility ID	Y	Non-Segregable	Data non-segregable and CBI	N
o	Transaction Comment	Y	Non-Segregable	Data not segregable	N
p	Document ID	Y	Non-Segregable	Data non-segregable and CBI	N
q	Document Name	Y	Non-Segregable	Data non-segregable and CBI	N
System	CDX Submission ID	Y	Non-Segregable	System Generated; not responsive	N
System	EMTS Submission ID	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction Date	N	Non-Segregable	System Generated; not responsive	N
System	EMTS Transaction ID	N	Non-Segregable	System Generated; not responsive	N

January 15, 2015

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F. (202) 654-9968**VIA US MAIL AND ELECTRONIC MAIL TO LARSON.BEN@EPA.GOV**US Environmental Protection Agency
William Jefferson Clinton Bldg. - North
ATTN: Ben Larson
Mail Code 6405A
1200 Pennsylvania Avenue, NW
Washington, DC 20004**Re: Comments in Response to 79 Federal Register 73577, Relating to *Perkins Coie LLP v. McCarthy*, No. 1:13-cv-1799 (TDC) (D.D.C. filed Nov. 11, 2013)**

Dear Mr. Larson:

Perkins Coie submits these comments in response to the United States Environmental Protection Agency's ("EPA" or "the agency") December 11, 2014 Notice, seeking comment on Perkins Coie's Freedom of Information Act ("FOIA") request for certain records submitted to the agency under the Renewable Fuel Standard ("RFS"). 79 Fed Reg. 73577.

Perkins Coie submitted its May 1, 2013 FOIA request that is the subject of the agency's Notice on behalf of a petroleum refining company. Perkins Coie seeks the requested information for several valid purposes related to the RFS rulemaking, and not for any competitive purpose. First, Perkins Coie expects to obtain data that will shed light on the extreme volatility and dysfunction in the RIN market, which caused the price of RINs to increase from their historic values of 2-5 cents/RIN to as high as \$1.44/RIN in July 2013. Perkins Coie also expects it will find that the participation of "unobligated" parties in the RIN market, *e.g.*, unobligated blenders and Wall Street speculators, has caused or has contributed to the extreme volatility and dysfunction in the RIN market and the sharp increase in the price of RINs, which is now wholly disconnected from the cost of blending renewable fuels. Finally, Perkins Coie expects to find that there are insufficient RINs available for 2013 compliance and that RIN scarcity due to the blend wall is contributing to the volatility and dysfunction in the RIN market.

Importantly, the agency failed to mention in its Notice (and in the individual CBI substantiation request letters the agency sent out to some submitters), that Perkins Coie is *not* seeking company specific or company identifying information. As stated in many attempts to "clarify" the FOIA request, Perkins Coie neither wants nor needs a submitting company's name, address, general location, registration, or other information that would enable it to identify the submitter. Rather, Perkins Coie is looking for raw data by party type. From the outset of the

discussions between Perkins Coie and EPA regarding the FOIA request, Perkins Coie advised EPA that the agency may redact any company identifying information, and that it was sufficient for Perkins Coie to know whether the data pertained to an "obligated" entity such as a refiner or importer, or an "unobligated" entity such as a blender, Wall Street or other third party, based on the registration classification of the submitting entity. Although the agency is aware that Perkins Coie is not seeking information identifying the submitting entity, EPA failed to inform the submitting entities of this fact, and failed to ask submitting entities if they object to the disclosure of the information without company identifying information.

It is also important to note EPA's early observation about Perkins Coie's request -- that the volume of data being sought by Perkins Coie is so large and the transactions in RINs so numerous -- that it would be impractical, if not impossible, to "back into" or "reverse engineer" the data if that were Perkins Coie's intent. At one time, EPA and Perkins Coie had agreed upon a method of production that the agency was satisfied would not reveal any confidential company information because it was being produced in a summary fashion without company identifying information. Had EPA noted these facts in the Notice, submitters might have agreed that the information could be produced and that there was not a risk of revealing information that could be claimed as CBI.

Perkins Coie believes that EPA seeks to prevent the disclosure of the information for its own purposes and not to protect the confidentiality of the information of the submitters. If the agency's intent was to find a way to produce responsive information that is not CBI, it would have shared with submitters that Perkins Coie is not requesting company identifying information and that EPA and Perkins Coie had agreed on a method for production that would not reveal company identifying information. Therefore, in any representations to the Court on the confidentiality of the information sought by Perkins Coie in reliance on CBI substantiation responses and comments submitted in response to EPA's Notice, Perkins Coie will be able to document EPA's transparent efforts to rally industry to oppose the production of the requested information through these important and material omissions in the Notice.

In addition, although Perkins Coie's FOIA request covered the time periods 2011-May 31, 2013, the Federal Register notice indicates that Perkins Coie sought information for the period 2011-2014. This is an unwarranted expansion of the data Perkins Coie requested. Submitters, not knowing that Perkins Coie is not requesting company identifying information, would naturally be concerned that the production of company-specific 2013 and 2014 RIN data would reveal the market position of individual companies, *e.g.*, whether they have purchased sufficient RINs for compliance, still require RINs for compliance, and the price at which they have purchased or sold RINs.

EPA expressed concerns to Perkins Coie that the disclosure of the requested information, without the company identifying information, could be confusing to Perkins Coie and others with

US Environmental Protection Agency

January 15, 2015

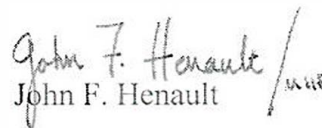
Page 3

whom Perkins Coie shares this information. EPA also expressed concerns that the information could be used "against" the agency at the White House or on Capitol Hill. These concerns are not recognized exemptions from FOIA's requirements. Perkins Coie seeks the information for valid reasons, including encouraging the agency to fix the renewable fuel standard to prevent "unobligated" blenders from reaping windfall profits at the expense of obligated refiners by reducing the volume mandates to avoid RIN scarcity and by excluding third party speculators from the market. By withholding the requested information, EPA is preventing an obligated party from meaningfully participating in the RFS rulemaking.

Put simply, the information that Perkins Coie seeks is not confidential business information if it cannot be associated with the submitter. Yet, it will be useful to Perkins Coie for purposes of proving the volatility and dysfunction in the RIN market and the windfall that the RFS rule mandates for unobligated blenders and other third parties.

Thank you for your consideration of Perkins Coie's comments.

Regards,


John F. Henault